

301 CMR 15.00: PROVISIONS FOR ADMINISTRATION OF THE DAM AND SEA WALL REPAIR OR REMOVAL FUND

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15.01: General Provisions

- (1) Authority. 301 CMR 15.00 is promulgated pursuant to M.G.L. c. 29, §2III (Chapter 448 of the Acts of 2012).
- (2) Purpose. 301 CMR 15.00 establishes the rules and regulations for the administration and implementation of the Dam and Sea Wall Repair or Removal Fund including, but not limited to, a priority system for the approval of projects. The Fund is used to provide grants and loans to local governmental bodies, charitable organizations and private Dam owners to finance or refinance eligible costs of coastal and inland waterway infrastructure inspection, Repair and Removal projects, including, but not limited to, projects related to Dams, Seawalls, Jetties, Revetments, Retaining Walls, Levies and other means of flood control.
- (3) The Executive Office of Energy and Environmental Affairs may issue supplemental policies, guidelines or guidance documents to assist in the implementation of 301 CMR 15.00.

15.02: Definitions

- (1) For the purposes of 301 CMR 15.00, the following terms shall have the following meanings:

Act means Chapter 448 of the Acts of 2012 as codified in M.G.L. c. 29, §2III.

Allowable Project Costs means costs EEA determines are necessary for the completion of the project in accordance with 301 CMR 15.05.

Applicant means any local governmental body, charitable organization or private entity that has applied for funding.

Borrower means an applicant who has been awarded a loan and who has executed a loan award agreement pursuant to the Act and these regulations.

Charitable Organization means an organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and that is registered with the Massachusetts Office of the Attorney General as a public charity.

Coastal Flood or Wave Control Projects means those projects intended to reduce the damaging effects of flooding or waves on coastal areas. Such projects may include the use of hard structures (e.g., seawalls, jetties, and groins) and/or measures that maximize the use of natural systems through the use/restoration of natural coastal landforms and resources (e.g., dunes, vegetation, and salt marsh).

Comm-PASS means the Commonwealth's online procurement record site or its successor as overseen by the Operational Services Division. (See <http://www.comm-pass.com/>)

Commissioner means the Commissioner of the Department of Conservation and Recreation or his or her authorized designee.

Commonwealth means the Commonwealth of Massachusetts.

Dam means any artificial barrier, including appurtenant works, which impounds or diverts water, and includes, but is not limited to, dams subject to the regulatory jurisdiction of DCR under 302 CMR 10.00 and other dams and similar impoundments or structures.

CZM means the Office of Coastal Zone Management.

DCR means the Department of Conservation and Recreation.

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EEA means the Executive Office of Energy and Environmental Affairs.

Flood Control Structure means a structure intended to direct, divert or otherwise contain unusual volumes of water, commonly created by storm events, such as a Dam, Levee, reservoir, tide gate, sluiceway, and/or appurtenant works.

Fund means the Dam and Sea Wall Repair or Removal Fund established by M.G.L. c. 29, § 2III.

Grant means funds provided under contractual terms by EEA to achieve a goal for the benefit of the general public or a segment of the general public consistent with EEA's overall mission.

Grantee means a public or non-public entity selected as a Recipient of a Grant.

Groin means a shore protection structure built (usually perpendicular to the shoreline) to trap littoral drift or impede erosion of the shore.

High Hazard Dam means a dam located where structural failure will likely cause loss of life and serious damage to homes, industrial or commercial facilities, essential public utilities, main highways or railroads.

Jetty means a structure extending into a body of water, which is designed to prevent shoaling of a channel by littoral materials and to direct and confine the stream or tidal flow. Jetties are built at the mouths of rivers, tidal inlets, and harbors to help deepen and stabilize a channel.

Levee means a dike or embankment generally of earthen materials designed to prevent riverine flooding after periods of exceptional rainfall.

Loan means any form of financial assistance subject to repayment which is provided by the Secretary to a local governmental body, charitable organization or private Dam owner for all or any part of the cost of a project approved in accordance with 301 CMR 15.00.

Local Governmental Body shall include a town, city, district, commission, board and any regional local governmental unit.

Low Hazard Dam means a dam located where structural failure may cause minimal property damage and loss of life is not expected.

Recipient means an entity with which EEA has executed a Loan or Grant agreement or contract.

Remove or Removal when applied to a Dam and similar impoundments, means the controlled dismantling or breaching of a structure, in compliance with applicable law, to the extent that water is not impounded or diverted or no longer impeded; provided, however, that, following a controlled dismantlement or breach, a minimal degree of impoundment necessary for agricultural uses or wetland retention and open water conditions may be allowed, so long as any impediment to fish passage has been removed and any threats to public safety or property have been alleviated.

Repair means the reconstruction, rehabilitation, or replacement, whether partial or wholly, of a structure.

Revetment means a structure, often a facing of stone or concrete, to protect an embankment or shore structure against erosion by wave action or currents.

Seawall means a structure, often concrete or stone, built along a portion of a coast to prevent erosion and damage by wave action.

Secretary means the Secretary of the Executive Office of Energy and Environmental Affairs or his or her designee.

Significant Hazard Dam means a dam located where structural failure may cause loss of life and damage to homes, industrial and commercial facilities, secondary highways or railroads or cause interruption of use of service of relatively important facilities.

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15.03: Program Management

- (1) EEA may use amounts in the Fund to make both Grants and Loans to eligible recipients as provided in 301 CMR 15.04.
- (2) Subject to available funding, EEA will post a Request for Responses on Comm-PASS of the availability of financial assistance from the Fund which will include information on how to apply and related program requirements.
- (3) All awards made shall be subject to 815 CMR 2.00.
- (4) Upon establishment of the Fund, fifty (50) percent of the monies deposited into the Fund shall be dedicated to a sub-account for Grant and Loan awards for projects related to Dams. The repayment of principle on all Loans from this sub-account shall remain dedicated to providing Loan assistance to projects related to Dams.
- (5) Upon establishment of the Fund, the remaining fifty (50) percent of the monies deposited into the Fund shall be dedicated to a sub-account for Grant and Loan awards for projects related to other means of flood or wave control including, but not limited to, Seawalls, Jetties, Groins, Revetments, Retaining Walls, and Levees. The repayment of principle on all Loans from this sub-account shall remain dedicated to these purposes.
- (6) Subsequent to the establishment of the Fund, interest paid to EEA on Loans issued shall also be allocated evenly to each sub-account as described above.
- (7) The Secretary shall solicit public input periodically on the priorities to be addressed by Grants and Loans authorized under 15.06: Priority System for Approval of Projects.
- (8) EEA may contract with a third party to assist with fund administration.
- (9) EEA may charge an annual fee to cover the cost of Loan administration during the term of the loan. All such fees and any interest charged will be outlined in the loan agreement.

15.04 Applicant and Project Eligibility

- (1) Applicants for Grants and Loans from the Fund must demonstrate an overall benefit to the general public as a result of completion of the proposed project. Any private benefit must be incidental to the public good.
- (2) Applicants must demonstrate that they have a clear and sufficient property interest in the land and structure that is subject to the grant or loan, and authority to allow third parties access all properties where the proposed work will be performed.
- (3) Eligibility to receive a Grant from the Fund is limited to Local Governmental Bodies and Charitable Organizations only.
- (4) Eligibility to receive a Loan from the Fund is limited to Local Governmental Bodies, Charitable Organizations, and private dam owners.
- (5) A Loan applicant must demonstrate to the satisfaction of EEA that it has the financial capability to repay the requested Loan.
- (6) Conditions for receiving a Loan for Dam projects shall include a demonstration by the Applicant that it has a continuing commitment to the proper maintenance and inspection of the Dam, if applicable.
- (6) Conditions for receiving a Loan for Coastal Flood or Wave Control Projects shall include a demonstration by the applicant of the following:
 - (a) The structure has been designated to be in critical or poor condition according to the five level condition rating system published in the Massachusetts Inventory and Assessment Project, as published by Massachusetts Department of Conservation and Recreation;

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- (b) The proposed design of the project meets all regulatory and safety requirements of the Commonwealth of Massachusetts and improves public health and/or safety; and,
- (c) The owner of the structure has established a maintenance and monitoring inspection program for similarly owned coastal protection structures, including, but not limited to Seawalls, Revetments, bulkheads, beach and dunes.

(7) Conditions for receiving a Loan for inland Flood Control Structures other than Dams shall include a demonstration by the Applicant of the following:

- (a) The structure has been determined by the United States Army Corps of Engineers to require imminent infrastructure improvement;
- (b) Completion of the project improves public health and/or safety; and,
- (c) The Applicant has established a maintenance and inspection program.

(8) The Secretary may waive any of the eligibility criteria in 301 CMR 15.04 that are not otherwise specifically required by M.G.L. c. 29, § 2III if necessary to further the public interest, as intended by the Act.

15.05: Allowable Project Costs

(1) Allowable Project Costs include all costs deemed by EEA to be necessary and reasonable for a project, including:

- (a) Execution of any agreements and sub-agreements deemed by the Secretary to be critical to the project;
- (b) Procurement, provision, and use of engineering, inspection, legal, financial, planning, geological, hydrological and other professional services, estimates and advice; permitting, and construction;
- (c) Organizational, administrative and other work and services, including salaries, equipment and materials necessary to comply with the applicable provisions of this chapter; and,
- (d) Training to ensure the proper operation and maintenance of the structures receiving financial assistance from the Fund, including training associated with inspections and emergency preparedness.

(2) The following costs are not Allowable Project Costs:

- (a) Costs incurred in preparing necessary documentation to apply for a Loan or Grant from the Fund;
- (b) Any costs incurred prior to the execution of a Grant or Loan with EEA;
- (c) Any items deemed by the Secretary to be unnecessary or not useful for completion of the project;
- (d) Ongoing operations and maintenance;
- (e) Any costs funded by any other Federal or other State grant or loan to the applicant; and
- (f) Costs to acquire an interest in real property.

15.06: Priority System for the Approval of Projects

(1) Funding Priorities Specified in the Act: Subject to the fifty percent (50%) split of funds provided in 301 CMR 15.03, first priority for funding shall be given to projects that are owned or operated by cities, towns and Charitable Organizations and that meet one or more of the following applicable criteria:

- (a) The structure has been classified by DCR as a High Hazard or Significant Hazard Dam in poor or unsafe condition;
- (b) The Coastal Flood or Wave Control structure has been rated in fair, poor or critical condition (C-F) according to the five level condition rating system in the Massachusetts Inventory and Assessment Project, as published by Department of Conservation and Recreation;
- (c) The structure has been identified in writing by the United States Army Corps of Engineers as requiring imminent infrastructure improvement.

(2) Other Funding Priorities for Dams: Further evaluation of projects shall be based on consideration, as applicable, of whether or the extent to which such projects:

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- (a) Result in improvement to public health and/or safety;
 - (b) Result in protection of public property;
 - (c) Have design plans that recognize the potential impact of climate change and improve resilience;
 - (d) Are part of a water supply system;
 - (e) Have obtained all applicable permits required to implement the project;
 - (f) Will improve or expand the functions of natural systems;
 - (g) Will reduce or eliminate a threat to native animal, and naturally occurring plant and resident or migratory fish species habitat or movement;
 - (h) Have secured local borrowing authorization.
- (3) Other Funding Priorities for Coastal Flood or Wave Control Projects including but not limited to Seawalls, Jetties, Revetments, Groins, Retaining Walls and Levees: Further evaluation shall be based on consideration, as applicable, of whether or the extent to which such projects:
- (a) Have a moderate to high protection level (III-V) in accordance with *The Massachusetts Coastal Infrastructure Inventory and Assessment Project*; or
 - (b) Have annual maintenance and monitoring reports that indicate a worsening condition or a licensed structural engineer has declared such;
 - (c) Result in improvement to public health and/or safety;
 - (d) Have design plans that recognize the potential impact of climate change and that improve resilience;
 - (e) Will improve or expand the functions of natural systems;
 - (f) Have obtained all applicable permits required to implement the project; and,
 - (g) Have secured the local borrowing authorization.
- (4) Other Funding Priorities for Inland Flood Control Structures: Further evaluation of inland Levees and similar Flood Control Structures, excluding Dams, shall be based on consideration, as applicable, of whether or the extent to which such projects:
- (a) Result in improvement in public health and/or safety;
 - (b) Have design plans that recognize the potential impact of climate change and that improve resilience;
 - (c) Will improve or expand the functions of natural systems;
 - (d) Have obtained all permits required to implement the project; and,
 - (d) Have secured the local borrowing authorization.
- (5) The Secretary may waive any of the evaluation criteria in 310 CMR 15.06 that are not otherwise specifically required by M.G.L. c. 29, § 2VIII if necessary to further the public interest as intended in the Act.

15.07: Execution of Grant and Loan Agreements

(1) Grants

- (a) All Grants awarded under this program shall be made on a reimbursement basis in accordance with 815 CMR 2.00;
- (b) A Grant award shall not commit or obligate EEA to award any continuation of funding to cover cost overruns for any project. Cost overruns for any project or portion thereof are solely the responsibility of the Grantee;
- (c) All funds awarded must be committed by the Grantee within 24 months of contract execution or be forfeited.

(2) Loans

- (a) All Loan agreements shall set forth the terms and conditions of the Loan, including a Loan repayment schedule and administrative fees, approved project scope, budget, approved project costs, securing the loan and the approved commencement and completion dates for the project or major phases thereof;
- (b) The Loan award shall not commit or obligate EEA to award any continuation loan to cover cost overruns for any project. Cost overruns for any project or portion thereof are solely the responsibility of the Borrower;

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- (c) The interest rate for Loans made shall be fixed at no more than two percent or one half the prime rate as published by the Federal Reserve Bank at the time the Loan application is made, whichever is greater;
 - (d) The Loan maturity period shall be for not more than 20 years from the date that disbursements to the Borrower begin. EEA and the borrower may establish a shorter repayment schedule by mutual agreement;
 - (e) All funds awarded must be committed within 24 months of contract execution or the Loan shall be cancelled and subject to repayment of all outstanding principal plus penalties, costs and interest;
 - (f) The Secretary shall establish terms and conditions for the execution and repayment of the Loans, including administration fees. All terms and conditions shall be outlined in the offering document for loan funds soliciting applications on Comm-PASS.
- (3) Loan and Grant agreements may also contain such other conditions and limitations as EEA deems necessary, including but not limited to:
- (a) Covenants by the applicant related to the project, including a covenant to comply with all federal and state statutes and regulations applicable to the local Applicant's construction and operation of the project;
 - (b) Measures deemed necessary by EEA to prevent or remedy a default by the Loan Recipient;
 - (c) Any requirements regarding certification of a project's performance or completion or compliance with EEA's guidance on the use of and requirements for professional subagreements.

REGULATORY AUTHORITY

301 CMR 15.00: M.G.L. c. 29, §2III.